

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS in and for the
COUNTY of VAN ZANDT COUNTY

FILED

FEB 10 2017

Clerk, U.S. District Court
Texas Eastern

Danya Ratliff – Heir of §
Estate of Dan Wiley Carroll (Deceased) §
Plaintiff § Case No. 6:16-CV-01030
v. §
Betty Cozette Nix Aaron and §
Richard Hinds §
Defendants §

**AMENDMENT COLLATERAL ATTACK MOTION TO VACATE VOID JUDGEMENT
AND FRAUD ON THE COURT**

TO THE HONORABLE JUDGE:

Now comes plaintiff, Danya Ratliff pro-se, specially and not generally, and respectfully and without attorney, in the above-captioned matter, to request that this Honorable Court take judicial notice of the enunciation of principles stated in *Hainesv.Kerner*, 404 U.S. 519, wherein the court directed that the pleadings of those unschooled in law shall be held to less stringent standards than formal pleadings drafted by lawyers. This is the amended complaint Ordered by the Magistrates Judge against Betty Cozette Nix Aaron and Richard Hinds hereby as follows:

JURISDICTION AND VENUE

Plaintiff brings this action under Federal Rules of Civil Procedure 60 (d) (1)-(3) – independent action. Venue is proper pursuant to 28 U.S.C. § 1391 because defendants are residents of the State in which the district is located.

FACTS AND PROCEDURAL HISTORY

1. This case (14493), filed in Van Zandt County Court at Law was the Estate of Dan Wiley Carroll, my dad, who passed away April 9, 2014.

2. I am the only child; his legal will filed at the Van Zandt County courthouse on May 28, 2014.

3. Decedent owned property described generally as real estate, cash, personal effects, and household goods of probable value in excess \$400,000.00.

4. Everything was his separate property, in his name only.

5. Betty Cozette Nix Aaron, his wife of only two years did submit a forged will with the Van Zandt County courthouse.

6. Roxie Cluck, her attorney has been unethical since the beginning of this case by filing the forged will. She knew I had a will because I spoke with her six days after my dad passed away to make sure she hadn't executed another will for him after his marriage to Ms. Nix Aaron. Ms. Cluck informed me she had not executed any will for my dad. She was my dad's attorney for 16 years in representing him with my parent's divorce and other legal matters.

7. My will was to be probated July 22, 2014 but four days before that Betty Cozette Nix Aaron filed a forged will to block mine.

8. September 23, 2014 I filed an Opposition to Counter-Application to Probate Will so the burden was back on Ms. Nix Aaron. Responding to the opposition of the will didn't happen. On November 11, 2014, Ms. Nix Aaron during her oral deposition stated, "she knew nothing about the last two pages of will, she took it out of my dad's lock box (silver metal one he kept important papers in) and didn't even look at it until handing it to her attorney (Roxie Cluck).

9. On its face, and as testified by Detective Bonnette a forensic document examiner and law enforcement officer, the Nix document had clearly been altered, is pieced together from different will forms, has multiple types of handwriting on it, and is unquestionably a forgery. In addition, I have spoke with Detective Bonnette regarding this forged document and he confirmed the signature of my dad's isn't his. This report forwarded to Roxie Cluck and she continued to keep the will filed with courthouse and continued to represent Mrs. Nix Aaron in this fraudulent activity. Now it's considered conspiracy and fraud on the court.

10. My attorney was unethical in keeping the forged will on file with courthouse and not reporting it to the Tribunal. Since he decided to disobey his ethical duties and laws as an attorney, he joined in with conspiracy. I wanted to take the information to the authorities and he told me I could not because he would be violating his ethics. Infact, when I asked him about going to DA he stated "he would have to report it because the DA wouldn't speak with me".

11. My attorney filed Motion for Partial Summary Judgment and was denied. Judge Randal McDonald referred the case to mediation. I have discovered Mr. Hinds

didn't follow procedure for Summary Judgment . My attorney knew I didn't want any settlement agreement and he even stated we were going to trial, not settling. This motion denied August 28, 2015.

12. Mediation occurred October 30, 2015 and this is when realized this case vitiated with fraud. During mediation, the mediator violated his Code of Ethics by continually giving legal advice (purposely-wrong legal advice). My attorney decided to turn on me during this procedure by violating his Rules of Professional Conduct (purposely-wrong legal advice). They both told me wrong information about the laws to get me to sign a settlement agreement to sale my dad's house and land. The start of mediation the mediator came in the room and stated "now that your will is revoked your dad died intestate let's begin" I then state, "Why is my will revoked when her will is a forgery and my dad didn't want to die intestate because he does have a valid will mine". The mediator and my attorney tried coming up with case law by looking on their tablets and knew I wanted a solid answer but could not come up with one. The mediator leaves the room and returns minute's later, sticks his head back in the room and ask my attorney to step in the other room to discuss the laws he was asking about earlier. I did not feel comfortable with this private meeting between the two and now I realize why this ex-parte should not have taken place. My attorney returns and states, "I'm withdrawing your will because Roxie Cluck is going to bring out your past charges in court and I won't let that happen", I state "Richard you told me you were going to do the Motion in Liming" he stated "no that can't be done it won't stop her so I'm withdrawing your will final". I was crying and very confused why my attorney was going against something he told I was not going to take place (settlement agreement). He told me we

were going to trial, so when I entered mediation I was not informed by my attorney what this procedure (mediation) was regarding any kind of settlement agreement. I even asked "can I please have time to think about this because this land my dad cherished, had been with me since I was born (45 years), and was a big decision. Mediator told me very abruptly, "no it has to be decided today". These two men were supposed to abide by their codes of professional conduct; instead, they had complete disregard and emotion to my emotional state of mind. How I determined this finally when they both state, "Your dad wouldn't want a woman your age taking care of 30 acres by her". I wanted to say "neither one of you knew my dad and what he wanted".

13. After mediation, I was devastated and emotionally depressed because the one thing my dad cherished and wanted me to have was being sold. I had already lost all his separate personal property by Ms. Nix Aaron illegally stealing and selling everything from me now his house. Ms. Nix Aaron signed my dad's name on two vehicle titles and the dealership accepted them. I finally told myself I have to stop this somehow. I first started with the information regarding the wrong information about the laws stated to me in mediation. I then e-mail my attorney trying to get him to explain why this happened but he continued with the lies. I attempted one more time trying to settle this issue with my attorney and when he said, "if you want to turn on me so be it" I knew he turned on me and wasn't going to help me.

14. I contacted attorneys in Dallas, Houston, and even San Antonio to help me and nobody would help me. I then contacted attorneys in Tyler and finally found one in Tyler (Steve Spitzer) but he then showed me how unethical he was by contacting my attorney stating, "He was reviewing the case". I gave this attorney \$5,000.00 and signed

a contract with him because he would be able to help me. He told me he would contact both attorney's to let them know he was going to be representing me now but instead he stole \$5,000.00 of my money and told me I needed to sign the final settlement agreement.

15. When my attorney finally realized I wasn't going to sign the final settlement agreement he did a Motion to Withdraw so my only hope now was the Judge would hear what I had to say and maybe I could get some help. Court was March 8, 2016 and it did not go as I thought it should have. We all stand before Judge Randal McDonald and I am waiting for him to ask me "why can't your attorney communicate with you" he did not ask anything. He signed the withdrawal and dismissed my attorney. Now I was pro-se in a courthouse that did not allow anybody to be pro-se in a probate case. I finally said "your honor may I say something" he looked at me as to let me know I could proceed "there has been legal misrepresentation regarding this case" I got that much out and Roxie Cluck started "objection" then the Judge said "do we need to get Richard Hinds back here to defend himself" I replied "I have documentation showing the proof" Roxie Cluck "objection" the Judge didn't even want to see the documentation. I did ask the Judge "where is someone suppose to find representation when in a case like this no attorney will touch it because of all the misrepresentation because I have learned attorney's don't turn on attorney's". He said, "I'm sure you can find legal representation somewhere". I could not believe what I was hearing. Judge Randal McDonald set the next court date for March 24, 2016.

16. I spent every day trying to find legal representation but never could succeed. While trying to find legal representation I was learning everything regarding the legal

laws to this case. The day before court, I e-mailed Mary E. Barker (Court Manager) to let her know I still had not found an attorney. I never received a reply so I contacted her first thing on the court day and she said, "Court will continue and you can talk to the Judge when you get here". I arrived and this court day was to enter the final judgment. We were before Judge McDonald and I stated "I'm still without legal representation" then Roxie Cluck states "they have settled and there isn't any issue left in this case" I said "in our last court date I told you there has been misrepresentation" before I could get the whole last word out Roxie Cluck "objection" and anything I tried speaking after that Roxie Cluck "objection" and the Judge allowed her to continually shut me down. Judge McDonald finally said "I can't continue to keep this case open and you didn't file anything so I'm signing judgment". I said "this court has said an individual has to have an attorney in a probate case and now I could have filed something". Judge McDonald proceeded to sign paperwork.

17. I have not received a hard copy from Judge McDonald's court yet on this judgment. They do have my correct mailing address.

18. I still tried finding legal representation and everyone told me they could not help me or there was not anything I could do. Finally, I consulted with one telling me he was too busy to take a case like this but he made some suggestions how to proceed. I continued to read law after law until I finally understood how I needed to file this motion.

19. I have learned after the judgment was signed many issues with this case. Judge McDonald denied me of due process under the Constitution and violated several issues under canon 3. I opposed Ms. Nix Aaron will before it entered into probate so the

burden was back on her to respond which never happened. When the contested case transferred to County Court at Law, Judge McDonald on September 23, 2014 remained untouched until August 27, 2015. When Detective Bonette's report submitted to my attorney, I should have reported it to the local authorities. Roxie Cluck after receiving Detective Bonette's report needed to abide by her ethical duties. My attorney denied me of due process from the very beginning of this case with all his unethical duties. Ms. Nix Aaron has committed many criminal activities in this case.

20. They tried to hold me in contempt and throw me in jail for six months because I would not sign my dad's land for sale over a settlement agreement I was induced to sign by misrepresentation. Judge McDonald disregarded anything I stated as to the misrepresentation, went against the Judicial Conduct Code under canon 3, and entered a judgment procured by fraud.

21. They have all caused me monetary loss, emotional distress, tortuous interference, and many, many hours defending against all this misrepresentation.

CLAIM I

22. Fraud on the Court – In *Kupferman v. Consolidated Research & Manufacturing Corp*, the court stated that

[w]hile an attorney "should represent his client with singular loyalty that loyalty obviously does not demand that he act dishonestly or fraudulently; on the contrary his loyalty to the court, as an officer thereof, demands integrity and honest dealing with the court." And when he departs from that standard in the conduct of a case he perpetrates a fraud upon the court.²⁰¹ In other words,

"[s]ince attorneys are officers of the court, their conduct, if dishonest, would constitute fraud on the court."

The doctrine of fraud on the court allows courts to provide equitable relief. Indeed, "the doctrine of fraud on the court is a judicially devised equitable doctrine, the application of which is dependent on the facts of the case."²²⁴ In *Hazel-Atlas*, the Court noted,

Equitable relief against fraudulent judgments is not of statutory creation. It is a judicially devised remedy fashioned to relieve hardships which, from time to time, arise from a hard and fast adherence to another court-made rule, the general rule that judgments should not be disturbed after the term of their entry has expired. Created to avert the evils of archaic rigidity, this equitable procedure has always been characterized by flexibility which enables it to meet new situations which demand equitable intervention, and to accord all the relief necessary to correct the particular injustices involved in these situations.

Both defendants intentionally committed fraud by allowing the forged document to remain filed with the courthouse. Mr. Hinds is an officer of the court so he does have ethics and laws he has to obey. Mrs. Nix Aaron is not a state official but she can be liable because of unlawful actions with a state official (conspiracy). Everything that took place from January 2015 on was fraud. I was denied a jury trial because of the fraud and deception. The worst of all of this is I lost every cherished separate property of my dad's because of the intentional forged document Mrs. Nix Aaron prepared and filed with the court. She knowingly and willing interfered with my inheritance (tortuous interference with inheritance rights). Extrinsic fraud, is fraud that prevents a party from fully putting on their case or being heard by the court which is a threshold inquiry to the *res judicata* exception in many jurisdictions.

In Texas regarding res judicata there is a widely-recognized exception, when the judgment was procured by extrinsic fraud.

Strick Lease Inc. v. Cutler 759 S.W. 2d at 777

Frame v. Lowe, stating, "Fraud in the procurement of a judgment is an "independent claim that is not barred by Rooker-Feldman."

United States v. Throckmorton Mr. Justice Miller delivered the opinion of the court. He said in part:

"But there is an admitted exception to this general rule in cases where, by reason of something done by the successful party to the suit, there was, in fact, no adversary trial or decision of the issue in the case. Where the unsuccessful party has been prevented from exhibiting fully his case by fraud or deception practiced on him by his opponent, as by keeping him away from court, a false promise of a compromise or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff, or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; or where the attorney regularly employed corruptly sells out his interests to the other side-these and similar cases, which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former judgment or decree and open the case for a new and fair hearing. . . . In all these cases and many others which have been examined relief has been granted on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all of his case to the court.

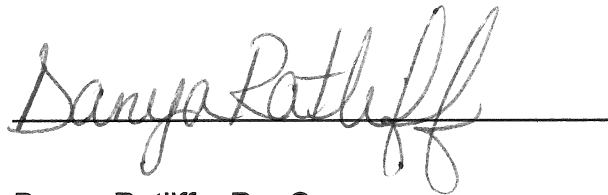
For a claim of fraud on the court, the Third Circuit has explained that such claim requires: "(1) an intentional fraud; (2) by an officer of the court; (3) which is directed at the court itself; and (4) in fact deceives the court." The doctrine of fraud on the court allows courts to provide equitable relief.

WHEREFORE, Plaintiff prays your Honorable Presiding Judge to vacate the void judgment ordered by Judge McDonald so I am not deprived of my constitutional right to due process. For actual, punitive, and tort damages. For the costs of suit incurred herein. For such other and further relief as the court may deem just and proper in Law and in Equity.

Plaintiff reserves the right to amend this complaint.

Demand Jury Trial

Respectfully submitted,

A handwritten signature in cursive script, reading "Danya Ratliff", is written over a solid horizontal line.

Danya Ratliff – Pro Se

PO Box 515

Harleton, TX 75651

903-452-4338

CERTIFICATE OF SERVICE

I certify that a complete copy of the above was served on

Richard Hinds

by: Danya Ratliff

certified mail, return receipt requested, certificate # _____,

at the following address: P.O. Box 1961 Mabank, TX 75147

fax to the following number: _____,

personal delivery,

on 2/10/17

Danya Ratliff

Danya Ratliff – Pro Se

PO Box 515

Harleton, TX 75651

903-452-4338